

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

U.S. COMMODITY FUTURES)
TRADING COMMISSION and)
OKLAHOMA DEPARTMENT OF)
SECURITIES *ex rel.* IRVING L.)
FAUGHT,)
)
Plaintiffs,)
)
v.)
) Civil Action No. 09-CV-1284 (DLR)
PRESTIGE VENTURES CORP., a)
Panamanian corporation, FEDERATED)
MANAGEMENT GROUP, INC., a Texas)
corporation, KENNETH WAYNE LEE,)
an individual, and SIMON YANG (a/k/a)
XIAO YANG a/k/a SIMON CHEN), an)
individual,)
)
Defendants; and)
)
SHEILA M. LEE, an individual, DAVID)
A. LEE, an individual, and DARREN)
LEE, an individual,)
)
Relief Defendants.)

SECOND JOINT STATUS REPORT AND DISCOVERY PLAN

Date of Conference: June 24, 2010

Appearing for Plaintiffs:

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Jury Trial Demanded - Non-Jury Trial

1. **BRIEF PRELIMINARY STATEMENT**. State briefly and in ordinary language the facts and positions of the parties to inform the judge of the general nature of the case.

In the Complaint filed on November 20, 2009, and the First Amended Complaint filed on March 4, 2010, Plaintiffs allege that since at least July 2003, corporate defendants Prestige Ventures Corp. (“Prestige”) and Federated Management Group (“Federated”), acting as a common enterprise, and individual defendants Kenneth Lee and Simon Yang, solicited and accepted monies from members of the general public to participate in commodities pools for trading commodity futures contracts, foreign currency and securities. Plaintiffs allege that Defendants’ acts and practices in connection with the commodities pool, violated the Commodity Exchange Act (“Act”), 7 U.S.C. §§ 1 *et seq.* (2006), Commission Regulations (“Regulations”), 17 C.F.R. §§ 1.1 *et seq.* (2009), and the Oklahoma Uniform Securities Act of 2004 (“OUSA”), Okla. Stat. 71, §§ 1-101 through 1-701 (Supp. 2009).

Plaintiffs also allege in the First Amended Complaint that Relief Defendants Sheila Lee, Darren Lee, and David Lee received benefits from Defendants’ acts and practices that constitute violations of the Act, Regulations, or OUSA.

Defendants and Relief Defendants deny Plaintiffs’ allegations.

2. **JURISDICTION**. The basis on which the jurisdiction of the Court is invoked and any currently known objections.

The jurisdiction of this Court is invoked pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2006), which authorizes the Commission to seek injunctive relief and enforce compliance of the Act against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, Regulation or order thereunder.

At this time, there are no known objections to the Court's jurisdiction.

3. **STIPULATED FACTS**. List stipulations as to all facts that are not disputed or reasonably disputable, including jurisdictional facts.

- A. The Court has jurisdiction over the subject matter and parties.
- B. The chosen venue is proper.
- C. Defendants and Relief Defendants have never been registered, in any capacity, with the Commission or under the OUSA, or any predecessor act.
- D. Prestige engaged in the business of soliciting and accepting funds from participants to pool together for the purpose of trading commodity futures, foreign currency and securities on behalf of those participants.

4. **CONTENTIONS AND CLAIMS FOR DAMAGES OR OTHER RELIEF SOUGHT**.

- A. Plaintiffs: Plaintiffs' claims are as follows:
 - i. Violations of Section 4b(a)(2)(i)-(iii) and 4b(a)(1)(A)-(C) of the Act - Fraudulent Solicitation, Misappropriation and False Statements;
 - ii. Violations of Section 4o(1) of the Act - Fraud as a CPO and Associated Person;
 - iii. Violations of Sections 6(c) and 9(a)(3) of the Act - Willful Misstatements or Omissions of Material Facts to the Commission;
 - iv. Violations of Sections 4m(1) and 4(k)(2) of the Act - Failure to

Register as CPOs and APs;

- v. Violations of Regulation 4.2 - CPOs Accepting Pool Funds Other than in the Name of the Pool, Commingling of Pool Funds with Own Funds, and Failure to Treat the Pool as a Separate Entity;
- vi. Violations of Regulation 4.21 - Failure to Provide Pool Disclosure Documents;
- vii. Disgorgement of Funds from the Relief Defendants;
- viii. Violations of Section 1-301 of the OUSA - Offer and/or Sale of Unregistered Securities;
- ix. Violations of Section 1-402 of the OUSA - Failure to Register as an Agent and Employing Unregistered Agents;
- x. Violations of Section 1-501 of the OUSA - Untrue Statements of Material Fact and Omissions of Material Fact in Connection with Offer, Sale or Purchase of Securities;
- xi. Violations of Section 1-501 of the OUSA - Employing a Device, Scheme or Artifice to Defraud; and
- xii. Violations of Section 1-501 of the OUSA - Engaging in any Act, Practice, or Course of Business Which Operates or Would Operate as a Fraud or Deceit upon any Person.

B. Defendants and Relief Defendants:

- i. Defendant Kenneth Lee and Relief Defendants Sheila Lee, David Lee, and Darren Lee, make the following contentions and claims for damages:
 - a. Kenneth Lee never violated Sections 6(c) and 9(a)(3) of the Act.
 - b. The pool participants that were known to be in a pool received their Pool Disclosure Documents. If the account holders, i.e. Ming Yu and Jian Yu, solicited their own family members, then there was no way for Kenneth Lee to know that there were other investors other than, i.e. Ming Yu and Jian Yu.

- c. The claim of disgorgement of Funds from the Relief Defendants will be disputed due to the fact that there was enough personal money to purchase disputed properties.
 - d. Kenneth Lee never employed unregistered Agents and never had to register as an agent. Simon Yang was never an agent or an employee and Kenneth Lee is not responsible for his rogue actions.
 - e. Kenneth Lee never employed a device, scheme, or artifice to defraud.
 - f. Kenneth Lee never engaged in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
 - g. There is a counter suit in development that will state the claims for damages for Kenneth Lee, Sheila Lee, David Lee, and Darren Lee against the CFTC and the ODS.
 - h. Sheila Lee, David Lee, and Darren Lee have not violated any Act and are completely innocent.
 - i. Mental anguish and punitive damages.
 - j. Violations of the CFTC and ODS against Sheila Lee, David Lee, and Darren Lee which violated the Relief Defendants protections by the Ninth Amendment of the Bill of Rights.
- ii. Defendant Simon Yang has made no contentions or claims for damages.

5. **APPLICABILITY OF RULE 5.1 AND COMPLIANCE.**

Do any of the claims or defenses draw into question the constitutionality of a federal or state statute where notice is required under 28 U.S.C. § 2403 or Fed. R. Civ. P. 5.1?

Yes No

6. **MOTIONS PENDING AND/OR ANTICIPATED** (include date of filing, relief requested, and date responsive brief to be filed).

- A. No motions are currently pending.
- B. Plaintiffs anticipate filing a Motion for Summary Judgment at an unknown time in the future.
- C. Relief Defendants are currently finishing a Motion for Continuance to be mailed out on June 23, 2010.

7. **COMPLIANCE WITH RULE 26(a)(1)**. Have the initial disclosures required by Fed. R. Civ. P. 26(a)(1) been made? Yes No

If "no," by what date will they be made? Defendant Simon Yang is the only party who has not made the initial disclosures required by Fed. R. Civ. P. 26(a)(1). Simon Yang has not communicated when he will make the required initial disclosures.

8. **PLAN FOR DISCOVERY.**

- A. The discovery planning conference (Fed. R. Civ. P. 26(f)) was held on March 16, 2010.
- B. The parties anticipate that discovery should be completed by September 30, 2010.
- C. In the event ADR is ordered or agreed to, what is the minimum amount of time necessary to complete necessary discovery prior to the ADR session? 2 months.
- D. Have the parties discussed issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced, as required by Fed. R. Civ. P. 26(f)(3)?

Yes No

- E. Have the parties discussed issues relating to claims of privilege or of protection as trial-preparation material, as required by Fed. R. Civ. P. 26(f)(4)?

Yes No

- F. Identify any other discovery issues which should be addressed at the scheduling conference, including any subjects of discovery, limitations on discovery, protective orders needed, or other elements (Fed. R. Civ. P. 26(f)) which should be included in a particularized discovery plan.

The parties are not aware of any discovery issues that should be addressed at the scheduling conference.

9. **ESTIMATED TRIAL TIME:** 1 week

10. **BIFURCATION REQUESTED:** Yes No

11. **POSSIBILITY OF SETTLEMENT:**

Defendants Prestige and Federated: Good Fair Poor

Defendants Lee and Yang, and Relief Defendants: Good Fair Poor

12. **SETTLEMENT AND ADR PROCEDURES:**

A. Compliance with LCvR 16.3(c) - ADR discussion: Yes No

B. The parties request that this case be referred to the following ADR process:

- Mediation
 Judicial Settlement Conference
 Other

None - the parties do not request ADR at this time.

13. **Parties consent to trial by Magistrate Judge?** Yes No

14. **Type of Scheduling Order Requested.** Standard - Specialized (If a specialized scheduling order is requested, counsel should include a statement of reasons and proposal.)

Submitted this 23rd day of June, 2010.

/s/ Katherine S. Driscoll
Counsel for Plaintiff
U.S. Commodity Futures Trading Commission

/s/ Terra Shamas Bonnell
Counsel for Plaintiff
Oklahoma Department of Securities

/s/ Kenneth Lee
Kenneth Lee, Defendant, *pro se*

/s/ _____
Simon Yang, Defendant, *pro se*¹

/s/ Darren Lee
Darren Lee, Relief Defendant, *pro se*

/s/ David Lee
David Lee, Relief Defendant, *pro se*

/s/ Sheila Lee
Sheila Lee, Relief Defendant, *pro se*

/s/ Stephen Moriarty
Stephen Moriarty, Receiver

¹ During the morning of June 23, 2010, Defendant Simon Yang authorized Plaintiffs to attach his electronic signature to a similar version of this Second Joint Status Report and Discovery Plan. After Mr. Yang gave such authorization, other parties requested revisions to the Second Joint Status Report and Discovery Plan agreed to by Mr. Yang. Despite multiple attempts, Plaintiffs were unable to contact Simon Yang to obtain his authorization to attach his electronic signature to this version of the Second Joint Status Report and Discovery Plan. The revisions made to the prior version do not relate directly to Mr. Yang.

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2010, I caused the Joint Status Report and Discovery Plan to be served by U.S. mail on the following, who are not registered participants of the ECF System:

Simon Yang
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Edmond, OK 73012

Kenneth Lee
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Sheila Lee
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David Lee
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Darren Lee
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I hereby certify that on June 23, 2010, I electronically transmitted the Joint Status Report and Discovery Plan to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Patricia A. Labarthe

Katherine S. Driscoll

Stephen J. Moriarty

Warren F. Bickford, IV

/s/ Terra Shamas Bonnell